

HAMBURGER, MAXSON, YAFFE & McNALLY, LLP

ATTORNEYS AT LAW

225 BROADHOLLOW ROAD, SUITE 301E

MELVILLE, NEW YORK 11747

631.694.2400

FAX: 631.694.1376

HMYLAW.COM

RICHARD HAMBURGER
rhamburger@hmylaw.com

June 25, 2019

VIA ECF

Hon. Cheryl L. Pollak, Magistrate Judge
U.S. Eastern District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Toussie v. Allstate Insurance Company
Case No.: 15-CV-05235 (ARR)(CLP)

Dear Judge Pollak,

On behalf of Mrs. Toussie, I write in connection with letters to Your Honor from attorneys Gary Meyerhoff and Frederick Stern, each dated June 24, 2019.

Tax Records/Declaration. As Mr. Stern has shown and as Mr. Meyerhoff has now acknowledged, the Declaration was, in fact, provided to Mr. Meyerhoff via email on June 21, as directed by the Court. As Mr. Meyerhoff has also acknowledged, Allstate's attorneys received a letter from me that same day advising that Mrs. Toussie joined in the factual presentation and contentions set forth in that Declaration, as also directed by the Court. I respectfully submit that there are enough actual contested matters in this case that no need existed to manufacture additional controversies with which to burden the Court.

Mr. Stern and I anticipate that Allstate will challenge the Declaration. In his June 21 letter to Your Honor forwarding Mr. Toussie's Declaration, Mr. Stern has set forth his reasons why the Declaration is compliant with both your February 6, 2019 Report and Recommendation and the May 13, 2019 Opinion and Order issued by Judge Allyne R. Ross. Mrs. Toussie joins in that position, and we are hopeful that Your Honor will give us a further opportunity to respond to Allstate's objections. To be clear, we are not re-arguing those rulings (as Allstate is likely to contend). Rather, in view of the particular demands made by Allstate, the reasons provided by Allstate as to why those demands were made, and the analyses undertaken by Your Honor and Judge Ross in enforcing those demands, we are confident that the Declaration is compliant.

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Prior Document Production. Beginning on June 21, we began to receive from Allstate's attorneys, via electronic delivery, thousands of pages of discovery documents previously exchanged by the parties. I thank Mr. Meyerhoff and Mr. Zahner for that. At the same time, as Your Honor knows, we have reached agreement with Schlam, Stone & Dolan, prior counsel to the Toussies, to release the case files in consideration of a cash deposit to be held in escrow by that firm as substitute security for their claimed attorneys' lien. Attorney Joshua Wurtzel, who participated in the June 21 conference call with Your Honor, has forwarded a draft escrow agreement to me, which I have already red-lined and returned to him. I expect that the agreement will be finalized shortly and submitted for Your Honor's approval. The escrow payment can then be made and the files released. Thus, counsel for the Toussies, with the assistance of the Court, and the cooperation of both Allstate's attorneys and prior counsel for the Toussies, has been moving forward expeditiously to be in a position to competently represent their clients based on knowledge of prior proceedings. We cannot acquire that knowledge overnight, but we are working on it.

Under this same heading, Mr. Meyerhoff raises issues concerning 2,000 photographs and 25 hours of video taken at the CFASS inspections. This, too, is an issue that should have been addressed between counsel before bringing it to the attention of the Court. Mr. Stern and I are well aware that you have ordered the boxes at CFASS to be removed by August 1, which requires us to reach an agreement with Allstate regarding the admissibility of photographs taken at the inspection or to make other arrangements for the boxes to be stored in a secure location with chain of custody intact. I spoke briefly about this with Mr. Zahner in the courtroom after our June 20 conference, and I have already followed up with him.

Respectfully,



Richard Hamburger

/lc

c: Via ECF:
Gary Meyerhoff, Esq.
Brendan E. Zahner, Esq.
Frederick P. Stern, Esq.